In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:	)	
	)	Chapter 7 Case
HORACE H. HALL, SR.	)	
	)	Number 03-42223
Debtor	)	

MEMORANDUM AND ORDER
ON DEBTOR'S MOTION TO RECONVERT

On January 6, 2005, Horace H. Hall ("Debtor") filed a Motion to Reconsider Order to Convert Debtor from Chapter 13 to Chapter 7. Because of language in Debtor's motion requesting that I "reconvert" his case and the arguments that he made at the February 17, 2005, hearing, I am treating Debtor's motion as a motion to convert under 11 U.S.C. § 706 as opposed to a motion to reconsider my previous order under Federal Rule of Civil Procedure 59 or 60. This Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. § 157(b). Based on the evidence presented at the hearing, the documents in the file, and the applicable authorities, the Court enters the following Findings of Fact and Conclusions of Law in conformance with Federal Rule of Bankruptcy Procedure 7052(a).

FINDINGS OF FACT

Debtor originally filed a petition under Chapter 13 of the Bankruptcy Code on July 21, 2003. On August 18, 2004, an Order confirming Debtor's Chapter 13 Plan was

filed which required that Debtor make plan payments of $11,265.00 per month. As part of the Order on Confirmation, I noted that failure to strictly comply with the terms of the confirmation order would result in Debtor's case being converted to Chapter 7 without further notice or hearing.[1] Debtor missed three monthly payments, and on December 17, 2004, Trustee filed a Notice of Non-Compliance of Strict Compliance Order. Accordingly, Debtor's case was converted to a case under Chapter 7 on December 17, 2004.

In Debtor's current motion, he stated that before receiving the notice of noncompliance, he was prepared to send $34,000.00 to the Chapter 13 Trustee in order to cure his default. At the February 17, 2005, hearing, Debtor's counsel explained that Debtor fell behind in his prior Chapter 13 payments as a result of failed negotiations to obtain new capital for his funeral home business. However, Debtor stated that business had since improved such that he was able to continue making payments. Debtor conceded that in order to bring his plan payments current it would be necessary to pay $45,000.00. Hearing no objections to Debtor's motion, I concluded that if Debtor tendered $45,000.00 to the Chapter 13 Trustee within a week I would grant Debtor's motion; otherwise it would be denied. Further, I instructed Debtor's counsel to notify me whether the required amount had been paid. On March 1, 2005, I received correspondence from Debtor's counsel indicating that she had not received proof that the required funds had been sent to the Chapter 13 Trustee. Letter from Constance L. Thomas, RE: Horace Hall, Sr. (March 1,

[1]Orders requiring strict compliance from a debtor are intended to avoid immediate dismissal or other relief at the time the order is entered. *See* In re Faulkner, 187 B.R. 1019, 1021 n.1 (Bankr. S.D. Ga. 1995) (Walker, J.). Because notice and a hearing are provided prior to entry of any strict compliance order, the actual occurrence of a default is the only prerequisite to granting the relief requested. Id. This avoids the necessity for the movant to make another court appearance to obtain relief which had already been proven to be appropriate.

2005).

CONCLUSIONS OF LAW

Section 706(a) of the Bankruptcy Code governs the conversion of a case under Chapter 7 to one under Chapter 13. It provides as follows:

> The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1307, or 1208 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.
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> 11 U.S.C. § 706(a).

By its terms, § 706 gives the debtor the absolute right [2] to convert a Chapter 7 case to a Chapter 13 at any time, unless it has previously been converted under Section 1307. Since I previously converted Debtor's original Chapter 13 case to Chapter 7 pursuant to 11 U.S.C. § 1307, Debtor no longer possesses the absolute right to convert his Chapter 7 case back to one under Chapter 13. The question, then, is whether Debtor maintains any right to reconvert his case after having exhausted his absolute right under section 706(a).

There are no reported cases on the question presented in this case which are binding upon this Court.[3] However, there are a number of reported cases from other

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[2] While noting the language of § 706(a), some courts have acknowledged that extreme circumstances may exist which would prevent a debtor from exercising a one time, absolute right of conversion. *See, e.g.* Martin v. Martin (In re Martin), 880 F.2d 857, 859 (5th Cir.1989).

[3] I have previously considered this issue, but declined to establish a rule since debtor in that case was ineligible for conversion under either of the two competing standards . *See* In re Stewart, No. 91-42252, 1994 WL 16006137, at *2 (Bankr. S.D. Ga. June 21, 1994).

bankruptcy courts. An examination of those cases reveal that two lines of authority have developed with regard to this issue. One line construes the plain language of § 706 and its legislative history[4] as imposing an absolute prohibition on a second conversion. *See* In re Carter, 84 B.R. 744, 747-48 (D. Kan. 1988); In re Baker, 289 B.R. 764, 768-70 (Bankr. M.D. Ala. 2003);In re Hardin, 301 B.R. 298, 300 (Bankr. C.D. Ill. 2003); In re Banks, 252 B.R. 399, 402-403 (Bankr. E.D. Mich. 2000); In re Vitti, 132 B.R. 229, 231 (Bankr. D. Conn. 1991); In re Hanna, 100 B.R. 591, 593-94 (Bankr. M.D. Fla. 1989). Courts limiting the right of conversion to a single opportunity have validated their decision on policy grounds by noting that:

> [I]t bars repeated attempts to convert which could otherwise delay the proceedings . . . . While it can be argued that making the right to convert discretionary with the court would curb the possible abuse of repeated conversions, such an interpretation would not prevent repeated attempts to convert. The harm of delay remains a real possibility with a discretionary right to convert, since a hearing upon due notice would be required in each instance to evaluate the debtor's motive and other relevant considerations.
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> Hanna, 100 B.R. at 594.

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[4]The legislative history for § 706(a) reads as follows:

> Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right.
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> H.R.Rep. No. 95-595, 95th Cong., 1st Sess. 380 (1977), *reprinted in* 1977 U.S.C.C.A.N.5963, 6336.

Both sides of this issue have used the same language from the legislative history to support its viewpoint which has led one court to conclude that it is less than clear. *See* In re Banks, 252 B.R. 399, 401 (Bankr. E.D. Mich. 2000) (citing In re Johnson, 116 B.R. 224, 225 (Bankr. D. Idaho 1990)).

A second line of cases permits a second conversion under § 706(a), after notice and a hearing, if, in the bankruptcy court's discretion, the debtor's circumstances warrant it. *See* In re Manouchehri, 320 B.R. 880, 884 (Bankr. N.D. Ohio 2004) (denying motion to reconvert when debtor's conduct lacked requisite good faith); In re Masterson, 141 B.R. 84, 87-88 (Bankr. E.D. Pa. 1992) (allowing second conversion after notice, a hearing and "careful scrutiny); In re Trevino, 78 B.R. 29, 32 (Bankr. M.D. Pa. 1987) (finding that court had discretion to consider reconversion, but not permitting it under the facts of the case). Courts holding this position argue that § 706(c) [5] should be read as containing an implicit authority for the court to convert the case upon the debtor's request under terms similar to the terms of subsection (b). *See* In re Sensibaugh, 9 B.R. 45, 46 (Bankr. E.D. Va. 1981).[6] Further, any other reading of § 706 would render subsection (c) meaningless. Id. *See also* In re Johnson, 116 B.R. 224, 225 (Bankr. D. Idaho 1990). Under this more lenient standard, courts looks to, "what most inures to the benefit of all parties in interest" in determining whether, in the court's discretion, a debtor should be permitted to reconvert his or her case back to Chapter 13. Sensibaugh, 9 B.R. at 46.

Debtor here failed to comply with my directive that he pay $45,000.00 to the Chapter 13 Trustee in order to obtain reconversion of his case to Chapter 13. Thus, even if I were to employ the more lenient standard in this instance, Debtor would be

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[5] 11 U.S.C. § 706(c) provides as follows:

> The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests such conversion.

[6] One court holding that second conversions are prohibited stated that, "the reasoning of the Court in Sensibaugh is fatally flawed because it reads a right of conversion into Section 706(b) which Congress did not provide." Baker, 289 B.R. at 768.

ineligible for a second conversion as such a conversion would not inure to the benefit all parties in interest. Therefore, I decline to consider whether to adopt a rule creating an absolute prohibition against second conversions under § 706(a).

O R D E R

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that Horace H. Hall's Motion to Reconsider Order to Convert Debtor from Chapter 13 to Chapter 7 is DENIED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of April, 2005.